

**REMARKS:**

Favorable reconsideration of this application is respectfully requested in view of the foregoing amendments and the following remarks.

By the foregoing amendment, claims 1-3 and 8-11 have been amended, and claim 12 has been added. No new matter is presented.

Thus, claims 1-12 are pending in this application, of which claims 1 and 8-11 are independent. The rejections are traversed below.

**Noted - IDS Considered**

The indication (see the List of references cited by applicant and considered by examiner dated February 17, 2009) that the Information Disclosure Statement (IDS) as filed on October 7, 2005 and references listed therein have been considered is noted with appreciation.

**Claim Rejection Under 35 U.S.C. §102**

Claims 1, 4, and 8-11 are rejected under 35 U.S.C. §102(e) as being anticipated by Patel et al. (7,370,004).

Claims 1 and 8-11 have been amended to further distinguish the subject matter over Patel et al.

**Independent Claim 1**

As an example, independent claim 1 as amended recites, among other things, the following features:

"a provider information storage portion that stores, in a storage medium, **provider area information that indicates an area to which the information provider desires to distribute provision information** and the provision information for each information provider, the provider area information-being designated by the information provider, and the provision information being to be provided by the information provider;

a user information storage portion that stores, in the storage medium, **user area information for each user who has a terminal device that obtains location information thereof independently from the information provision brokerage system and transmits the location information thus obtained to the information provision brokerage system, the user area information indicating an area being**

**identified by the location information of the user thus obtained and at the same time by a condition set by the user;**

a determining portion, comprising a central processing unit, **that determines whether or not the area indicated by the provider area information overlaps the area indicated by the user area information"** (emphasis added).

The teachings of Patel et al. including the Abstract thereof discuss a personalization engine for making a decision as to which of the plurality of information/product/services to present to the user. However, Patel et al fails to suggest or disclose that the provider area information indicates an area to which the information provider desires to distribute provision information.

Furthermore, Patel et al. is totally silent about a terminal device that obtains location information thereof independently from the information provision brokerage system and transmits the location information thus obtained to the information provision brokerage system, the user area information indicating an area being identified by the location information of the user thus obtained and at the same time by a condition set by the user.

Since Patel et al. fails to disclose the area provider area information and the user area information as recited in independent claim 1, Patel et al. does not determine whether or not the area indicated by the provider area information overlaps the area indicated by the user area information.

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. In view of the distinction of claim 1 noted above, at least the claimed elements discussed above are not present in Patel et al. Hence, Patel et al. does not anticipate claim 1.

#### **Independent Claim 8**

As an example, independent claim 8 as amended recites, among other things, the following features:

"a provider information storage portion that stores, in a storage medium, **provider area information that indicates an area to which the information provider desires to distribute provision information** and the provision information for each information provider, the provider area information being designated by the

information provider, and the provision information being to be provided by the information provider;

a user information storage portion that stores, in the storage medium, **user area information for each user who has a terminal device that obtains location information thereof independently from the information provision brokerage system and transmits the location information thus obtained to the information provision brokerage system, the user area information indicating an area being identified by the location information of the user thus obtained and at the same time by a condition set by the user;**

a determining portion, comprising a central processing unit, that **determines whether or not the area indicated by the provider area information overlaps the area indicated by the user area information**" (emphasis added).

The teachings of Patel et al. including the Abstract thereof discuss a personalization engine for making a decision as to which of the plurality of information/product/services to present to the user. However, Patel et al fails to suggest or disclose that the provider area information indicates an area to which the information provider desires to distribute provision information.

Furthermore, Patel et al. is totally silent about a terminal device that obtains location information thereof independently from the information provision brokerage system and transmits the location information thus obtained to the information provision brokerage system, the user area information indicating an area being identified by the location information of the user thus obtained and at the same time by a condition set by the user.

Since Patel et al. fails to disclose the area provider area information and the user area information as recited in independent claim 8, Patel et al. does not determine whether or not the area indicated by the provider area information overlaps the area indicated by the user area information.

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. In view of the distinction of claim 8 noted above, at least the claimed elements discussed above are not present in Patel et al. Hence, Patel et al. does not anticipate claim 8.

**Independent Claim 9**

As an example, independent claim 9 as amended recites, among other things, the following features:

"an upper limit checking portion that counts and checks a number of registrations as a different information delivery destination member and **prevents the user from being registered as another member when the number of registrations thus counted reaches a predetermined number for the user**".

Although Patel et al. discusses a Profile Manager that coordinates and manages all user profile related information (Patel et al., column 8, lines 21-31), it does not disclose or suggest, among other things, a noted feature in independent claim 9.

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. In view of the distinction of claim 9 noted above, at least the claimed elements discussed above are not present in Patel et al. Hence, Patel et al. does not anticipate claim 9.

**Independent Claim 10**

As an example, independent claim 10 as amended recites, among other things, the following features:

"making a provider information storage portion store, in a storage medium, **provider area information that indicates an area to which the information provider desires to distribute provision information** and the provision information for each information provider in advance, the provider area information being designated by the information provider, and the provision information being to be provided by the information provider;

making a user information storage portion store, in the storage medium, **user area information in advance for each user who has a terminal device that obtains location information thereof independently, the user area information indicating an area being identified by the location information of the user thus obtained and at the same time by a condition set by the user;**

**determining, by a central processing unit, whether or not the area indicated by the provider area information overlaps the area indicated by the user area**

**information"** (emphasis added).

The teachings of Patel et al. including the Abstract thereof discuss a personalization engine for making a decision as to which of the plurality of information/product/services to present to the user. However, Patel et al fails to suggest or disclose that the provider area information indicates an area to which the information provider desires to distribute provision information.

Furthermore, Patel et al. is totally silent about a terminal device that obtains location information thereof independently, and the user area information indicating an area being identified by the location information of the user thus obtained and at the same time by a condition set by the user.

Since Patel et al. fails to disclose or suggest the area provider area information and the user area information as recited in independent claim 10, Patel et al. does not determine whether or not the area indicated by the provider area information overlaps the area indicated by the user area information.

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. In view of the distinction of claim 10 noted above, at least the claimed elements discussed above are not present in Patel et al. Hence, Patel et al. does not anticipate claim 10.

#### **Independent Claim 11**

As an example, independent claim 11 as amended recites, among other things, the following features:

"reading provider area information corresponding to provision information to be transmitted from a provider information storage portion that stores, in a storing medium, the provider area information and the provision information in an interrelated manner for each information provider, **the provider area information indicating an area to which the information provider desires to distribute the provision information** and the provision information being to be provided by the information provider;

reading user area information of a user who is a destination of the transmission

from a user information storage portion that stores, in the storing medium, the user area information for each user, **the user area information being identified by location information of the user obtained by a terminal device possessed by the user and at the same time by a condition set by the user;**

**determining, by a central processing unit, whether or not an area indicated by the read provider area information overlaps an area indicated by the read user area information"** (emphasis added).

The teachings of Patel et al. including the Abstract thereof discuss a personalization engine for making a decision as to which of the plurality of information/product/services to present to the user. However, Patel et al fails to suggest or disclose that the provider area information indicates an area to which the information provider desires to distribute provision information.

Furthermore, Patel et al. is totally silent about the user area information being identified by location information of the user obtained by a terminal device possessed by the user and at the same time by a condition set by the user.

Since Patel et al. fails to disclose the area provider area information and the user area information as recited in independent claim 11, Patel et al. does not determine whether or not the area indicated by the provider area information overlaps the area indicated by the user area information.

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. In view of the distinction of claim 11 noted above, at least the claimed elements discussed above are not present in Patel et al. Hence, Patel et al. does not anticipate claim 11.

#### **Dependent Claim 4**

Claim 4 depends from independent claim 1. A basis for how Patel et al. is deficient vis-à-vis claim 1 has been discussed above. Accordingly, at least for the reason that claim 4 depends from claim 1, claim 4 is also allowable.

#### **Claim Rejection Under 35 U.S.C. §103**

Claims 3 and 6-7 are rejected under 35 U.S.C. §103(a) as being unpatentable over Patel et al. (7,370,004).

**Dependent Claim 3**

Claim 3 is rejected under 35 U.S.C. §103(a) as being unpatentable over Patel et al. (7,370,004). However, according to the Office Action (pages 7 and 10), claim 3 is actually rejected as being unpatentable over Patel et al. in view of Swensen et al. (5,420,883).

Claim 3 as amended recites, among other things, "a movement information obtaining portion that obtains movement information that indicates **a speed and a direction of movement of the user who moves freely in the area**" (emphasis added). According to Swensen et al., the speed and the direction of movement are totally based on the fixed movement patterns on the tracks (rails), whereas, the feature recited in claim 3 is based on a free movement, i.e., trackless movement.

Furthermore, claim 3 depends from independent claim 1. A basis for how Patel et al. is deficient vis-à-vis claim 1 has been discussed above. Accordingly, at least for the same reasons as claim 1, claim 3 is also allowable.

Further, even assuming arguendo that Swensen et al. does disclose the features discussed by the Examiner, the Applicants respectfully submit that there is no rationale to combine the cited references. The Examiner stated that the combination of the references would be obvious in order to select information providers that the user has not already passed. Absent improper hindsight, however, the record fails to provide the required evidence of a rationale for a person of ordinary skill in the art to perform such modification.

**Dependent Claim 6**

Claim 6 depends from independent claim 1. A basis for how Patel et al. is deficient vis-à-vis claim 1 has been discussed above. Accordingly, at least for the same reasons as claim 1, claim 6 is also allowable.

**Dependent Claim 7**

Claim 7 depends from independent claim 1. A basis for how Patel et al. is deficient vis-à-vis claim 1 has been discussed above. Accordingly, at least for the same reasons as claim 1, claim 7 is also allowable.

At least on page 8 of the outstanding Office Action, the Examiner indicates that it is old and well known to keep customers informed on the delivery status of an order. Applicants respectfully traverse the Examiner's statement because supporting evidence related to the suspending functionality of the claimed invention has not been provided, and request that the Examiner produce authority for the statement.

The Applicants specifically point out the following errors in the Examiner's action.

First, the Examiner uses common knowledge ("well-known") evidence for the rejection. As explained in the M.P.E.P.,

any facts so noticed should... serve only to "fill in the gaps" in an insubstantial manner which might exist in the evidentiary showing made by the Examiner to support a particular ground for rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection is based.

M.P.E.P. § 2144.03

Second, the noticed fact is not considered to be common knowledge or well-known in the art. In this case, the limitation is not of notorious character or capable of instant and unquestionable demonstration as being well-known. Instead, this limitation is unique to the present invention (see, M.P.E.P. § 2144.03(A) (the notice of facts beyond the record which may be taken by the Examiner must be "capable of such instant and unquestionable demonstration as to defy dispute").

Third, there is no evidence supporting the Examiner's assertion (see, M.P.E.P. § 2144.03(B) ("there must be some form of evidence in the record to support an assertion of common knowledge").

Fourth, the Examiner appears to be basing the rejections, at least in part, on personal knowledge. The Examiner is required under 37 C.F.R. § 1.104(d)(2) to support such assertion with an affidavit when called for by the Applicant. The Examiner is called upon to support such assertion.

Further, even if the Examiner's assertion and rejection based on common knowledge is valid, the claimed invention is distinguishable as discussed above.



**Claim Rejection Under 35 U.S.C. §103:**

Claims 2 and 5 are rejected under 35 U.S.C. §103(a) as being unpatentable over Patel et al. (7,370,004) in view of Taschereau (20040076279).

**Dependent Claim 2**

Claim 2 depends from independent claim 1. A basis for how Patel et al. is deficient vis-à-vis claim 1 has been discussed above. Accordingly, at least for the reason that claim 2 depends from claim 1, claim 2 is also allowable.

**Dependent Claim 5**

Claim 5 depends from independent claim 1. A basis for how Patel et al. is deficient vis-à-vis claim 1 has been discussed above. Accordingly, at least for at least the same reasons as claim 1, claim 5 is also allowable.

**New Claim:**

New claim 12 has been added. Distinguishing features of the base claim from which new claim 12 ultimately depends have been noted above. As for new claim 12 not argued above, the following comments are provided.

A feature at the least that distinguishes new dependent claim 12 over the applied art is "a movement information obtaining portion that obtains **movement information that indicates a speed and a direction of movement of the user who moves freely in the area without being restricted by time and the segment areas, the movement information being obtained based on information of a global positioning system (GPS) incorporated in the terminal device**" (emphasis added).

Therefore, it is respectfully submitted that claim 12 is patentably distinguishable over the cited references.

**ENTRY OF AMENDMENT:**

Applicants respectfully request entry of amendments to the claims because the amendments were made to clarify features in the claims and do not introduce significant changes that would require a further search.

**WITHDRAWAL OF FINALITY:**

As discussed above, each of the independent claims are allowable over the cited references, and therefore, Applicants respectfully request reconsideration of the finality of the rejection and withdrawal of the finality of the Office Action.

**Conclusion:**

In view of the foregoing amendments and remarks, this application is considered to be in immediate condition for allowance, and thus, reconsideration and a Notice of Allowance are courteously solicited.

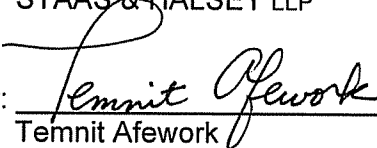
If there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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